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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

HAMMER LANE R.V. & MINI STORAGE, LP, et
al.,

Plaintiffs and Respondents,

v.

SHARON SCOFIELD, as Trustee, etc.,

Defendant and Appellant.

C074606

(Super. Ct. No.
34200800023098CUCOGDS)

Defendant Sharon Scofield, as Trustee of the Sharon Scofield Family Trust (Scofield), begins her appeal by quoting an African proverb that where elephants fight, the grass suffers. In Scofield's version of the case, the elephants are two partners who fought for control of a limited partnership. Although the dispute was settled by a temporary restraining order, the fight continued. The grass these elephants trampled consisted of innocent minority partners, including Scofield. Plaintiffs, including Hammer

Lane R.V. & Mini-Storage, LP (Hammer Lane R.V.), argue Scofield’s literary flourish is appropriate, since her claims are as fictitious as the imaginary elephants trampling the grass.¹

Pachyderms and grass aside, the case before us concerns the formation of a limited partnership, Hammer Lane R.V., and the subsequent rancorous disagreements between investors. Samra and Kooyman formed Hammer Lane R.V. to own and operate a self-storage facility and created a limited liability company, HLM, to act as general partner. Alice Scofield (Alice), mother of defendant Scofield, invested \$1 million in Hammer Lane R.V. with proceeds from the sale of family property. She later gifted her limited partner interest in Hammer Lane R.V. to Scofield. After Hammer Lane R.V. failed to prove profitable, Samra proposed selling the business. A power struggle between the minority limited partners and Samra and Kooyman resulted in protracted litigation. Ultimately, plaintiffs obtained a judgment for declaratory relief and orders awarding fees and costs jointly and severally against Scofield and the other minority partners. Scofield appeals, arguing the declaratory relief was improper since there was no actual controversy, Samra was not the prevailing party, and the court failed to apportion the fee and cost award. Another limited partner, Diversified Foundation, LP (Diversified), has filed a petition for writ of supersedeas. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Genesis of Hammer Lane R.V.

In 2003 Samra and Kooyman hired an attorney, Jugjit “Jack” Johal (Johal), to form Hammer Lane R.V., a limited partnership. The purpose of Hammer Lane R.V. was

¹ Plaintiffs in this action are Hammer Lane R.V., by and through its general partner, Hammer Lane Management, LLC; Hammer Lane Management, LLC (HLM); Richard Samra, as cotrustee of the Richard and Ravinder Samra Family Trust (Samra); and Bernard C. Kooyman, as cotrustee of the Bernard C. Kooyman & Donna K. Kooyman Revocable Living Trust (Kooyman).

to own and operate a self-storage facility. Samra and Kooyman created HLM, a limited liability company, to act as general partner, with Samra as the managing member and Kooyman as the only other member.

Johal drafted the agreement of limited partnership (the Agreement) for Hammer Lane R.V., which identified Samra and Kooyman as the “original limited partners” and HLM as the sole general partner for the limited partnership. As general partner, HLM possessed sole control over the partnership’s assets, “including, without limitation, the power to “(i) execute . . . agreements for sale” of the partnership’s property. Under the Agreement, a vote of 75 percent is required of all the limited partners for removal of the general partner and the unanimous approval of all limited partners to admit an additional partner.

Hammer Lane R.V. provided future limited partners with a subscription agreement to be reviewed and executed. The subscription agreement affirmed that the subscriber read the Agreement, including the rights and obligations of the limited partners, and agreed to be bound thereby; in making the determination to invest, the subscriber relied only upon information separate from the general partners and limited partnership; the subscriber did not rely on any offering literature or prospectus, and understood that no representations were being made regarding possible tax consequences of the transaction; the subscriber had sufficient knowledge and experience in financial matters to weigh the risks and benefits of investment; the subscriber understood the limited partnership was new, lacked an operating history, and was a speculative investment; and that the subscriber possessed sufficient resources to bear a potential loss of his or her entire investment.

In 2003 Hammer Lane R.V. acquired land and, after purchasing the property, obtained a multimillion dollar loan for the construction of the self-storage facility. The loan was guaranteed by Samra, Kooyman, and their respective family trusts. Hammer Lane R.V. built a mini-storage facility and opened for business the following year.

Subsequently, the construction loan was refinanced with a loan in the amount of \$4.9 million, also guaranteed by Samra, Kooyman, and their family trusts.

Scofield Invests in Hammer Lane R.V.

Johal also served as family attorney to Alice. In 2003, prior to Hammer Lane R.V.'s formation, Scofield contacted Johal about setting up an Internal Revenue Code section 1031 (IRC 1031) tax-deferred exchange to shelter the proceeds of the sale of her mother Alice's property. (26 U.S.C. § 1031.) Johal advised Alice, in her 80's, to roll over a portion of the proceeds from the sale of her parents' ranch into another investment through an IRC 1031 exchange. The plan was not only to shelter the sale proceeds from taxes but also to provide income for Scofield, which would allow Scofield to retire and care for her mother.

Because the ranch had been held by Alice in a limited family-owned partnership, Johal advised Scofield and Alice that an IRC 1031 exchange was "highly aggressive," and if audited, the transaction could be disallowed, resulting in a large tax bill, accrued interest, and a 25 percent penalty. After consulting with Johal, Alice decided to proceed with the IRC 1031 exchange, investing \$1 million from the sale of her property into Hammer Lane R.V.

In 2004 Johal invested in Hammer Lane R.V., also via an IRC 1031 exchange. The other limited partners consisted of Diversified, owned by Mark Zimmerman (Zimmerman); Gwerder Family Trust; and Lance Leffler. Gwerder Family Trust and Lance Leffler relinquished their limited partner interests before trial.

As anticipated, in 2006 Alice gifted her interest in Hammer Lane R.V. to Scofield. Scofield executed an amendment to the Agreement, affirming her obligations under Hammer Lane R.V.'s governing contract, substituting for Alice as a limited partner, and assigning her new interest in the partnership to her own family trust.

Financial Difficulties for Hammer Lane R.V.

Hammer Lane R.V. failed to turn a profit in its first five years. In May 2008 Samra, on behalf of Hammer Lane R.V., wrote to the limited partners, advising them of several options to address the ongoing financial problems. One option was the sale of Hammer Lane R.V.'s mini-storage facility.

Johal informed Scofield such a sale could wipe out her investment. Scofield reacted angrily to the letter. She believed such a sale should not occur in a down market, did not believe she had received sufficient information about the financial status of Hammer Lane R.V., and thought she could not do another IRC 1031 exchange. Scofield called Samra, objecting to the sale, and wrote to Johal, threatening legal action. Scofield told Johal if he did not find an attorney to oppose Samra, she would.

Limited Shareholder Revolt

Under the Agreement, removal of the general partner required a 75 percent vote of the limited partners. Samra and Kooyman each held a 28.25 percent partnership share, so replacing the general partner required the consent of both. Removal of the general partner required willful misconduct, fraud, deceit, gross negligence, default under the Agreement, breach of fiduciary duty, or bankruptcy.

Surreptitiously, Johal, in August 2008, formed a new entity named HLMS, LLC, owned solely by Johal, to act as general partner of Hammer Lane R.V. After drafting a resolution stating the minority partners wanted to remove HLM as general partner and appoint HLMS, LLC instead, Johal met individually with each of the limited partners to discuss the plan.

After Johal met with the minority limited partners, each executed a written consent to oust HLM as general partner and install HLMS, LLC in its place. Johal told Scofield that under a 2008 decision of the United States Court of Appeals, Ninth Circuit, the votes of the minority members would be legally sufficient to replace HLM as general partner.

Scofield relied on Johal's legal advice.² Johal promised Scofield that he would hold her harmless against any legal expense or costs that might arise from her signing the consent form.

On August 25, 2008, Johal filed with the Secretary of State an amendment to certificate of limited partnership, naming HLMS, LLC as Hammer Lane R.V.'s general partner.

Neither Samra nor Kooyman received any notice of the written consent, nor was either afforded the opportunity to vote on or participate in the appointment of HLMS, LLC as general partner. The written consent was mailed to HLM on August 25, 2008.

HLMS, LLC executed a new property management agreement with Zimmerman Land Corporation, owned by minority partner Zimmerman. Zimmerman Land Corporation opened two bank accounts, for HLMS, LLC and Hammer Lane R.V. Johal solicited a check from Scofield for \$150,000, to be used as a loan to the limited partnership in exchange for an interest in Hammer Lane R.V. Johal used the funds to finance the new Hammer Lane R.V. bank account. Zimmerman, at Johal's request, directed Hammer Lane R.V.'s payment processing service to deposit all rent receipts into the new account. HLMS, LLC took control of Hammer Lane R.V., conducting business with vendors and instructing employees not to deal with Samra, and attempted to remove Samra, Kooyman, and HLM from the limited partnership's insurance policies.

HLM Reacts

After receiving HLMS, LLC's written consent on August 25, 2008, HLM, through Samra, sought legal counsel, who wrote to Johal and the minority limited partners

² The Ninth Circuit granted rehearing in the case Johal relied upon, *Perretta v. Prometheus Dev. Co.* (9th Cir. 2008) 520 F.3d 1039, in May 2008. (*Perretta v. Prometheus Dev. Co.* (May 23, 2008) 527 F.3d 853 [petn. granted by order].) In its statement of decision, the trial court called the minority's reliance on *Perretta* "at best . . . ill advised . . . at worst . . . outrageous."

demanding they cease their unauthorized activities. On September 25, 2008, after the minority limited partners refused to cede control, Hammer Lane R.V., HLM, Samra, and Kooyman filed suit, seeking alternative equitable relief of a judicial decree of dissolution, declaratory relief, and preliminary and permanent injunctions. The complaint stated that the removal of HLM would trigger a mandatory dissolution of the limited partnership under the terms of the Agreement. The day after the complaint was filed, Johal recorded the amendment to certificate of limited partnership in San Joaquin County, where Hammer Lane R.V. is located.

On October 8, 2008, HLM sought a temporary restraining order to enjoin HLMS, LLC from interfering with the operation of Hammer Lane R.V. and to restore the status quo. Johal and the other limited partners opposed the order. The court granted a temporary restraining order, pending a hearing on HLM's motion for a preliminary injunction.

Under the temporary restraining order, HLMS, LLC was directed to return all partnership assets to HLM, including the funds in the accounts opened by Zimmerman. However, immediately after the October 8, 2008, hearing, Johal delivered two checks to Scofield, repaying her for about half of the money she had given to HLMS, LLC.

In November 2008 the minority limited partners filed a "non-opposition" to the motion for a preliminary injunction. Shortly afterward, they filed an answer to the complaint, denying the complaint's allegations. In June 2009 the minority limited partners filed a cross-complaint, alleging that "[a]t all times relevant herein cross-complainant HLMS[, LLC] was and has been elected by the limited partners of Hammer Lane[R.V.] as general partner of Hammer Lane [R.V]."

Subsequent Events

On April 14, 2010, the minority partners commenced *In re Hammer Lane R.V. & Mini Storage, LP (In re Hammer Lane)* (Super. Ct. Sacramento County, 2010, No. 3420100075573CUPTGDS), a proceeding under Corporations Code

section 15908.02 to buy out management's partnership interests. Thereafter, plaintiffs requested and were granted a dismissal with prejudice of their first cause of action for a judicial decree of dissolution. Days later, the minority partners requested and were granted a dismissal of their cross-complaint in the instant case. However, they persisted with their buyout efforts in the *In re Hammer Lane* case, persuading the trial court in that action to stay further proceedings in this action pending resolution of their claims. In explaining to the trial court why a stay was necessary in view of their willingness to agree the preliminary injunction would continue in effect, counsel for the limited partners explained that a buyout would obviate the need for a declaration: "[W]e have, in our view a statutory right to avoid ever having that determination made at all. And that's what we are trying to do and have been trying to do since day one."

Ultimately, in *Panakosta Partners, LP v. Hammer Lane Management, LLC* (2011) 199 Cal.App.4th 612, this court affirmed the trial court's holding that the dismissal of the first cause of action deprived it of jurisdiction to proceed with the buyout petition. (*Id.* at p. 630.)

Before the stay of trial court proceedings in this case, Scofield filed oppositions to pretrial motions in limine, stating: "The only issue to be decided in the Declaratory Relief Cause of Action is whether current General Partner and Plaintiff Richard Samra can perfect his Preliminary Injunction and remain as General Partner of Hammer Lane Storage Facility. This is largely a determination of whether Section 10.6 of the Partnership Agreement violates California Corporations Code [section] 16103[, subdivision] (b)(3)."

In May 2012 Scofield, who had obtained new counsel, sued Johal for malpractice in advising her to sign the consent to substitute HLMS, LLC as general partner in place of HLM.³

After the stay ended, trial was set for November 13, 2012. In May 2012 Scofield attempted to revive her cross-claims, which the trial court found to be in bad faith. Scofield also sought summary judgment on the complaint. She argued she was immune from liability and that “Plaintiff HLM as the general partner can simply choose to ignore any vote of the limited partners to remove [Hammer Lane Management, LLC] which it deems to be improper.” The trial court denied Scofield’s motion.

In August 2012, to avoid the expense and potential delay of a lengthy trial, plaintiffs filed a request for and were granted dismissal of their third cause of action for a permanent injunction. However, HLM declined to stipulate to the dismissal of the preliminary injunction, stating it was necessary to preserve the status quo pending a determination of the rights and obligations of the parties. Johal and Zimmerman moved to dissolve the preliminary injunction; Scofield failed to seek timely relief. The motion was granted.

On the first day of trial, Scofield and the remaining minority partners withdrew the affirmative defenses set forth in their answer, with the exception of the failure to state a cause of action. At trial, Scofield, Johal, and Zimmerman testified. Scofield testified she never disclosed to any of the plaintiffs prior to trial that she no longer contested the declaratory relief sought.

The trial court concluded that defendants failed to demonstrate the request for declaratory relief was moot. After considering the relationships between the partners, the court determined: “[R]egardless of how inappropriate or how heinous or what the

³ We grant Scofield’s second motion for judicial notice filed August 21, 2015.

motivations were, the [Agreement] is what governs, what goes on henceforth. . . . Regardless of what the reasons were, the parties have to comply with the [Agreement].” The court found that “there is a continuing relationship between the parties that I think warrants a declaration, how they’re going to conduct themselves pursuant to the [Agreement] given what’s taken place in the past. And I do think that that is within the scope of an action for declaratory relief.”⁴

Judgment and Attorney Fees

The court issued a statement of decision and entered judgment for declaratory relief in plaintiffs’ favor on June 3, 2013. The trial court found: “1. The Agreement of Limited Partnership of Hammer Lane R.V. & Mini-Storage LP (hereinafter ‘the Agreement’) does not permit the minority limited partners representing 42.5002% of the interest in the partnership to remove Hammer Lane Management, LLC (hereinafter ‘HLM’) as general partner.

“2. The Agreement does not permit minority limited partners representing 42.5002% of the interest in the partnership to appoint a new general partner.

“3. The attempt to elect/appoint HLMS, LLC . . . as general partner was improper, ineffective and did not result in a change of the general partner or replacement of HLM as general partner.

“4. As the majority percentage ownership of limited partners holding 56% ownership in Hammer Lane R.V. & Mini-Storage LP . . . , Richard and Ravinder Samra Family Trust and Bernard C. Kooyman & Donna K. Kooyman Revocable Living Trust were and are entitled to notice of any nomination or appointment of a general partner by the minority percentage limited partners and to participate in any such nomination or appointment.

⁴ We grant Scofield’s amended motion for judicial notice filed February 9, 2015, regarding proceedings following this action.

“5. HLMS [, LLC] was not and is not the general partner of [Hammer Lane R.V.] and did not and does not have the authority to conduct the affairs of [Hammer Lane R.V.], including establishment of any bank accounts or execution of any contract on behalf of [Hammer Lane R.V.]

“6. The Amendment to Certificate of Limited Partnership Agreement filed by Jack S. Johal . . . on behalf of HLMS [, LLC] is null, void and without legal effect because neither Johal, Mark Zimmerman nor any defendant in this lawsuit had any right or authority to file such certificate and it was in contravention of the Agreement.”

Scofield moved for a new trial and to vacate the judgment. The court denied the motions.

Plaintiffs filed a motion for attorney fees and costs as prevailing party. On August 13, 2013, the court found plaintiffs the prevailing party and awarded \$642,285 in attorney fees and \$47,586.60 in costs pursuant to contract. The court also held, over Scofield’s objection, that defendants were jointly and severally liable for the fees and costs. The trial court entered judgment for attorney fees and costs on September 5, 2013. Scofield filed a timely notice of appeal.

DISCUSSION

Dueling Judgments

At the outset, Scofield contends the trial court erroneously entered two judgments, rendering the second judgment for attorney fees and costs voidable. As noted, the trial court on June 3, 2013, entered judgment for declaratory relief in plaintiffs’ favor. Subsequently, on September 5, 2013, the trial court entered a judgment for attorney fees and costs. Scofield argues the second judgment is void and we are compelled to reverse the trial court’s void act.

However, plaintiffs “do not dispute this claim and the trial court has already entered an Order conceding the error.”

Actual Controversy

Scofield argues the trial court erred in granting declaratory relief in plaintiffs' favor because there was not actual controversy between the parties. She contends her only act was the signing of Johal's consent form, Samra's dismissal of the dissolution and injunction claims established the absence of any controversy, and the amended partnership certificate did not create a controversy.

In the trial court, in support of their request for declaratory relief, plaintiffs argued there was a continuing controversy despite defendants' dismissal of their cross-complaint and their concession that HLM was the sole general partner of Hammer Lane R.V. Plaintiffs cited defendants' persistent opposition to plaintiffs' efforts to restore the status quo to the business after defendants filed their amended statement of partnership with the Secretary of State. In addition, plaintiffs argued defendants' actions, including the filing of the amended statement of partnership, continued to interfere with their banking relationships and the ability of Hammer Lane R.V. to obtain credit and refinance existing loans and lines of credit.

The trial court found plaintiffs presented credible evidence that their bankers had expressed a need for clarification of ownership and leadership of Hammer Lane R.V. In addition, the court found it critical that the amended partnership certificate stating HLMS, LLC was Hammer Lane R.V.'s general partner remained on file with the Secretary of State. Accordingly, the court found an actual controversy existed that justified declaratory relief.

The court concluded: "[I]t does not appear defendants' ultimate concession of the impropriety of their actions to replace HLM as general partner has rendered the controversy moot. [Hammer Lane R.V.] continues to operate as a business. The partnership and hence the relationship between the minority and majority limited partners continues. The public record is confused with contradictory filings asserting general partnership. The banking relations of [Hammer Lane R.V.] have been disrupted and the

lenders continue to demand clarity. Finally, it has not been proven to the satisfaction of the court that the possibility of recurrence of the challenged conduct has been eliminated with reasonable certainty. Accordingly, there is an actual controversy within the meaning of Civil Code §§ 1060-1061 and plaintiffs are entitled to declaratory judgment”

Code of Civil Procedure section 1060 provides, in part: “Any person interested under a written instrument . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties . . . including a determination of any question of construction or validity arising under the instrument or contract.”⁵

Under section 1060, an actual controversy is “one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.) However, the actual controversy requirement does not include controversies “ ‘that are “conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from the court.” ’ ” (*Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 186.) Declaratory relief is appropriate where the controversy between the parties is based on concrete fact, not mere hypothetical or speculation, and where withholding relief would result in hardship. (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540.)

A declaratory judgment sought pursuant to section 1060 may be sought to establish rights once a conflict has arisen and is frequently used to settle controversies

⁵ All further statutory references are to the Code of Civil Procedure unless otherwise designated.

between parties to a contract regarding the nature of their contractual rights and obligations. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 898; *Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647-648.) Declaratory relief is appropriate for resolving disputes over contractual rights and duties where, despite a breach of contract, a relationship between the parties continues so that a declaration may guide the parties' future conduct or where the use of declaratory relief will avoid future suits that may ensue if another remedy is pursued. (*Warren v. Kaiser Foundation Health Plan, Inc.* (1975) 47 Cal.App.3d 678, 683-684.)

On appeal, Scofield challenges the trial court's analysis of the evidence and reiterates the arguments defendants made in the trial court. She claims Samra's dismissal of the dissolution and injunction claims established the absence of any actual controversy. According to Scofield, "Because the allegations justifying judicial dissolution were the same facts alleged to justify declaratory relief and injunctive relief, Samra's determination that dissolution was no longer necessary was a determination that there was no longer any threat from the minority limited partners." We disagree.

As the trial court noted, it is well settled that a defendant's voluntary cessation of challenged behavior does not render a case moot: "Voluntary cessation ordinarily does not render a claim moot because of the risk that the defendant could stop the challenged practice just long enough for the case to be dismissed and then resume the improper conduct." The standard for determining whether a case has been mooted by the defendant's voluntary conduct is if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness. (*Friends of Earth v. Laidlaw Env. S.* (2000) 528 U.S. 167, 189 [145 L.Ed.2d 610]; *San Francisco Baykeeper v. Tosco Corp.* (9th Cir. 2002) 309 F.3d 1153, 1159-1160.) Scofield fails to meet this burden.

The enmity between the parties continued at the time the trial court granted the declaratory judgment. As the court pointed out, the filing of the amended partnership certificate continued to interfere with Hammer Lane R.V.'s relationship with its banks. The record supports the trial court's finding.

Both Samra and Kooyman testified that the Bank of Stockton knew of the turmoil surrounding Hammer Lane R.V. and the competing attempts to control the limited partnership. The bank postponed any effort to place the loan in default based on Samra and Kooyman's efforts to obtain a declaratory judgment to settle the controversy. Samra testified, "In conversations with the bank, they have told me the discussions they have internally. They told me the issues they have with regulators who scrutinize the file. They've been asking me constantly for years, you know, when is this going to be over? When are you going to have your declaration of rights?" Scofield did not object to this testimony.

On appeal, Scofield attempts to diminish this testimony, contending: "For his own reasons, Samra did not call any of the bankers themselves to testify in support of the declaratory relief that they supposedly eagerly awaited. Their testimony would have been far stronger than Samra's and Kooyman's hearsay. Scofield acknowledges that this hearsay was not objected to and therefore is properly in evidence, but it is still hearsay evidence and of nowhere near the same weight as testimony from the bankers themselves." We are not convinced by Scofield's gloss on the evidence. Samra's and Kooyman's testimony firmly supports the trial court's finding that defendants' actions, including those of Scofield, continued to interfere with Hammer Lane R.V.'s relationship with its bank.⁶

⁶ Since we find Samra's and Kooyman's testimony sufficient to support the court's finding, we do not consider Scofield's argument that Samra could have filed an amended certificate of limited partnership to remove the cloud on the limited partnership.

Scofield also attempts to avoid the applicability of declaratory relief to her as an individual defendant. She argues there was no evidence she had done anything improper, nor was there any reasonable expectation she would do so in the future. To support her claims, Scofield painstakingly parses the trial court's description of the actions taken by the limited minority partners that demonstrated an actual controversy.

Scofield concludes: "In other words, the evidence on which the trial court found an actual controversy involving Scofield was nothing more than that Scofield signed the consent on Johal's advice and urging, and that her name was on the cross-complaint filed by Johal's selected law firm until that cross-complaint was dismissed two years before trial. Even as to Johal, the evidence was that once he became aware of the fate of the *Perretta* decision in late 2008 he knew his strategy had definitively failed. And, after Scofield learned that the case Johal had relied on was not good law not only had she not contested plaintiff's control or management of the limited partnership, she sued Johal alleging that the consent was void. This evidence was uncontradicted.

"There was no evidence to suggest any reasonable likelihood that Scofield would take any action in the future to challenge Samra's right to manage Hammer Lane [R.V]." In addition, Scofield asserts: "Samra indisputably knew that Scofield had repudiated Johal's actions because he was a party to the same case. For that reason there could be no question whatsoever about any threat of future conduct on Scofield's part adverse to Samra's position as managing partner of the limited partnership. Samra knew it. The trial court mistakenly failed to recognize it."

We are not persuaded by Scofield's efforts to minimize and diminish her participation in the litigation. Scofield filed a cross-complaint to affirm HLMS, LLC as general partner of Hammer Lane R.V., regardless of why or at whose urging. Scofield and the other minority limited partners filed oppositions to pretrial motions in limine arguing the only issue to be decided in the declaratory relief action was whether general partner Samra can perfect his preliminary injunction and remain as general partner. The

motions remained pending until the trial. Scofield was not a passive participant but, as the trial court found, an active participant with the other minority limited partners in their attempt to oust Samra and Kooyman.

Prevailing Party

Scofield contends Samra obtained only a portion of the relief he sought and obtained no meaningful relief against Scofield. Therefore, Samra could not be considered the prevailing party as to Scofield.

The trial court possesses wide discretion in determining which party prevailed in the underlying action. We will not disturb the trial court's determination absent a clear abuse of discretion. (*Acree v. General Motors Acceptance Corp.* (2001) 92 Cal.App.4th 385, 400.) Although Scofield argues equitable considerations must be taken into account in determining the prevailing party, an award of attorney fees is a matter of right when the statutory considerations have been met. *Hsu v. Abbata* (1995) 9 Cal.4th 863, 872.) A court may determine there is no prevailing party only where the results were mixed to the extent that the victory or loss is evenly divided, or where no relief is awarded to any party. (Code Civ. Proc., § 1032, subd. (a)(4); Civ. Code, § 1717, subd. (a); *Hsu, supra*, 9 Cal.4th at pp. 875-876.)

Here, the Agreement provides that attorney fees and costs are to be awarded to the prevailing party. Defendants prevailed on their request for declaratory relief on the contract. As the trial court determined, "when the results of the litigation on the contract claims are not mixed—that is when the decision on the litigated contract claims is purely good news for one party and bad news for the other—the Courts of Appeal have recognized that a trial court has no discretion to deny attorney fees to the successful litigant."

We agree with the trial court and are not convinced by Scofield's argument that Samra had to backtrack and admit defeat on two issues: the judicial dissolution claim and the request for a preliminary injunction. The fact remains that defendants prevailed

on their request for declaratory relief. Scofield further contends Samra obtained no meaningful relief against her. She reiterates her argument that “not only was there no evidence that Scofield had interfered with Samra’s management in the past, there was no evidence from which the trial court could conclude she would interfere in the future. . . . There was simply nothing to suggest Scofield would do anything that justified declaratory relief to forestall.” Again, we are not convinced by Scofield’s attempts to undermine the need for declaratory relief against her.

Apportionment of Fees and Costs

Scofield argues there was a “vast gulf between Scofield’s ‘culpability’ (if she can be said to be culpable at all) and that of HLMS[, LLC], Johal or Zimmerman.” The trial court abused its discretion in failing to apportion fees and costs among the plaintiffs.

After considering the evidence, the trial court found: “[Scofield] was one of the ones that was dissatisfied with the direction the company was taking. She was one of the ones that was concerned and felt that whatever actions were being taken by Samra were not in the best interests of the company and wanted something done about it. And that’s, I presume, why she ended up listening to Mr. Johal in the first place. And yes, she followed his advice. But the fact that he was the one structuring and designing the actions that were taken, at that point the Scofield Family Trust was a fairly willing participant.

“And I didn’t see in the facts that Mr. Johal simply took the ball and ran with it without the support and consent of the Scofield Family Trust.”

As the court noted, Scofield was a participant in the ongoing litigation, which culminated in the declaratory relief in favor of defendants. As we have noted, Scofield hired new counsel in May 2012. Subsequently, prior to the beginning of trial, Scofield attempted to revive her cross-claims and sought summary judgment on the complaint. The trial court found the attempted revival to be in bad faith and denied the motion for summary judgment. In addition, during trial, Scofield testified she never disclosed to the

plaintiffs prior to trial that she no longer contested the declaratory relief sought. Despite her protestations to the contrary, Scofield remained an active participant in the litigation. We find no abuse of discretion.

DISPOSITION

The judgment is affirmed. Plaintiffs shall recover costs on appeal.

_____RAYE_____, P. J.

We concur:

_____MURRAY_____, J.

_____HOCH_____, J.